

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-222100

DATE: April 7, 1986

MATTER OF: Grace Contractors, Inc. - Davis-Bacon Act
Debarment

DIGEST:

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor failed to pay the minimum wages--he did not pay any wages at all--as required by the Act and had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees and falsification of records was intentional. Therefore, the contractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by letter dated January 4, 1985, recommended that Grace Contractors, Inc. (Grace) and James Washington, individually and as President of Grace Contractors, Inc., be placed on the debarred bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), which constituted a disregard of obligations to employees under the Act. For the following reasons, we concur with DOL's recommendation and order its implementation.

Grace worked as a subcontractor under contract No. DACA45-83-C-0024, for the Department of the Army, Corps of Engineers, Detroit Arsenal Tank Plant, Warren, Michigan. The contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1985), the subcontractor was to submit, through the prime contractor, payroll records certified as to correctness and completeness.

The DOL found as a result of an investigation that employees were not paid the minimum wages required under the Davis-Bacon Act. In this regard, according to the applicable Wage Decision (No. MI81-2032 with Modifications

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1 and 2), employees performing work as bricklayers were to receive \$20.68 per hour, Group 1 laborers \$16.03 per hour, and Group 2 laborers \$16.11 per hour, including fringe benefits. The investigation disclosed that the employees were not paid for their labors at all.

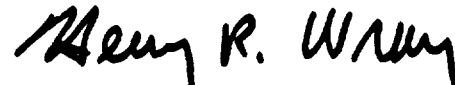
Furthermore, the DOL investigation revealed that Grace submitted certified payrolls which were falsified and incomplete. These payrolls falsely indicated payment of the required prevailing wage rates to all employees. The payrolls were certified by James Washington, President of Grace, to be accurate and complete.

By certified letter dated June 29, 1984, the DOL notified Grace of the violations with which it was charged, together with an admonition that debarment was possible. In addition, Grace was given an opportunity for a hearing before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1985). The DOL reported to us that Grace received the letter, but did not respond to it. After reexamining the record, DOL found that Grace violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names Grace Contractors, Inc., and James Washington, individually and as President of Grace Contractors, Inc., be placed on the ineligible bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act. We concur in this recommendation. We also note that the record indicates that the prime contractor made restitution to the employees.

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he finds have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2 (1982). In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification and "substantial violations" which are intentional as demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act. Falsification of payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based on our independent review of the record in this matter, we conclude that Grace and James Washington, individually and as President of Grace Contractors, Inc., disregarded their obligations to their employees under the Davis-Bacon Act in that the failure to pay employees was intentional as demonstrated by Grace's bad faith in the falsification of certified payroll records. Mr. Washington personally participated in the falsification of the payrolls.

Accordingly, we order that the names of Grace Contractors, Inc., and James Washington, individually and as President of Grace Contractors, Inc., be included on a list to be distributed to all departments of the government, and pursuant to statutory direction, no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of such list.

A handwritten signature in black ink, appearing to read "Henry R. Wray". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Henry R. Wray
Associate General Counsel